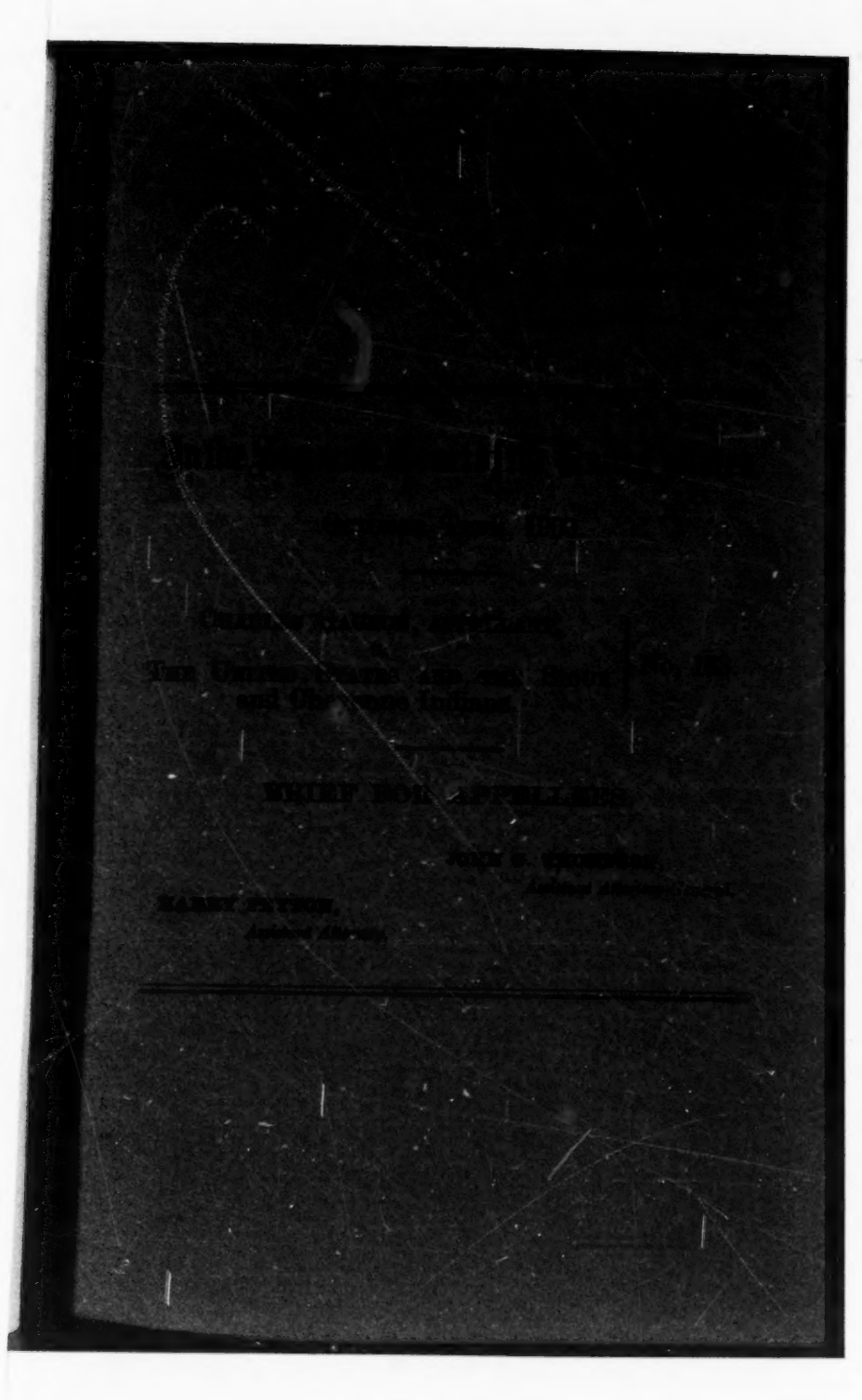

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

CHARLES GAGNON, APPELLANT,
v.
THE UNITED STATES AND THE SIOUX and Cheyenne Indians. } No. 163.

BRIEF FOR THE APPELLEES.

I. STATEMENT OF THE CASE.

This was a case instituted in the Court of Claims under the Indian depredation act of March 3, 1891, for the recovery of $15,500, for property taken from the firm of Hosford & Gagnon. The third paragraph of the petition (R., p. 1) alleges that both members of the firm were at the date of the depredation citizens of the United States. The date of the alleged depredation was February 17, 1866.

On the 19th of March, 1897, counsel for the claimant gave notice to the Attorney-General that they proposed to make application to the district court of Richardson County, Nebr., on the 29th of March, 1897, on behalf of Charles Gagon, *for the restoration of certain lost records* relative to the naturalization of the said Gagnon (R., p. 5). Presumably this notice was intended as a basis for an

order of the court under sections 899 and 900 of the Revised Statutes, which are as follows:

> SEC. 899. When the record of any judgment, decree, or other proceeding of any court of the United States is lost or destroyed, any party or person interested therein may, on application to such court, and on showing to its satisfaction that the same was lost or destroyed without his fault, obtain from it an order authorizing such defect to be supplied by a duly certified copy of the original record, where the same can be obtained; and such certified copy shall thereafter have, in all respects, the same effect as the original would have had.
>
> SEC. 900. When any such record is lost or destroyed, and the defect can not be supplied as provided in the preceding section, any party or person interested therein may make a written application to the court to which the record belonged, verified by affidavit, showing such loss or destruction; that the same occurred without his fault or neglect; that certified copies of such record can not be obtained by him; and showing also the substance of the record so lost or destroyed, and that the loss or destruction thereof, unless supplied, will or may result in damage to him. The court shall cause said application to be entered of record, and a copy of it shall be served personally upon every person interested therein, together with written notice that on a day therein stated, which shall not be less than sixty days after such service, said application will

> be heard; and if upon such hearing the court is satisfied that the statements contained in the application are true, it shall make and cause to be entered of record an order reciting the substance and effect of said lost or destroyed record. Said order shall have the same effect, so far as concerns the party or person making such application and the persons served as above provided, but subject to intervening rights, which the original record would have had if the same had not been lost or destroyed.

It will be noted that the right to invoke this remedy exists "when the record of any judgment, decree, or other proceeding of any court of the United States *is lost or destroyed.*" As to notice, section 900 provides:

> * * * The court shall cause said application to be entered of record, and a copy of it shall be served personally upon every person interested therein, together with a written notice that on a day therein stated, which shall not be less than sixty days after such service, said application will be heard. * * *

The notice hereinbefore mentioned (p. 5, R.) evidently contemplated this statutory proceeding; but a discovery of the existence of the records of the district court of Richardson County, Nebr., as disclosed by Finding V (p. 6, R.), unquestionably diverted the purpose of the appellant, and the order, instead of restoring a record lost or destroyed, was taken as an order *nunc pro tunc* to

make a decree of naturalization as an amendment *nunc pro tunc* to the records that were in existence at that time, but which records failed not only to show a decree of naturalization but failed to contain any memoranda, memorial paper, or other writing showing that anything was done at that term of the court toward the naturalization of the claimant.

It is to this order or decree *nunc pro tunc*, which was rendered upon oral testimony alone, without any memorial paper or written memoranda being before the court of what transpired some thirty-three years previous to the making of this order, that the defendants in the court below objected and which the Court of Claims declined to accept in establishment of its jurisdiction.

II. QUESTION INVOLVED.

The question involved in this case is one jurisdictional to the Court of Claims, i. e., the citizenship of the present claimant, Charles Gagnon, who sues in his own right for one-half of the property alleged to have been taken, as appears by the petition (R., p. 1). The Court of Claims, under the findings of fact set forth on pages 2, 3, 4, 5, 6, and 7 of the record, held as a conclusion of law that the claimant, Charles Gagnon, was not a citizen of the United States on the date of the said depredation, on the 17th of February, 1866, and upon this jurisdictional ground dismissed the petition. From this judgment of the court the claimant in the court below appeals.

The appellees do not controvert many of the elementary contentions presented by the appellant on his brief. They concede the general powers of the court to enter judgments *nunc pro tunc*, the right to enter such orders *nunc pro tunc* at any time, even after the lapse of many years. They do not controvert the proposition that verity should attach to the judicial records of the several states and that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State, as directed by article 4, section 1, of the Constitution of the United States. These, in appellees view of the case, are not questions involved herein. *The real question is whether or not the judge of the District court of the first judicial district of the State of Nebraska had the power and jurisdiction to enter judgment nunc pro tunc restoring a record of naturalization which the claimant contends should have been entered on the 25th day of September, 1863, when there was no record, memorial paper, or memoranda in existence as a basis for the amendment of the record, to correct which the order of 1897 nunc pro tunc was entered.*

The appellees did not in the court below attack a decree of naturalization, nor do they in this court contend that an original decree of naturalization is not final. Appellant in his discussion of the question confuses the issue. The defendants in the court below insisted that there was no inherent power in the district court in Nebraska in 1897 to enter a *nunc pro tunc* decree amending

the record and restoring a decree of that court rendered in 1863, unless there was some written memoranda, memorial paper, or minute upon the dockets of that court showing the pendency of the original proceeding.

That the records were thus deficient is apparent from the agreed state of facts set forth in Finding V (p. 6, R.).

Appellant (p. 9 of his brief) contends that Finding V does not support the contention of the defendants in the court below that the records of the territorial court of Nebraska for the years 1862, 1863, and 1864 are now complete and intact. He states:

> The appearance docket covering the year 1863 is shown to exist, though it contains blank pages; and the trial docket for this year also exists, as is shown by the references to it. But the one important and material record of the court, the journal for 1863, has not been shown to be in existence.

Finding V (p. 6, R.) is as follows:

> A search of the records of the district court of Richardson County, Nebr., at Falls City, made by a special attorney of the Department of Justice, and admitted as evidence by agreement of the parties, discloses the following facts:
>
> From the organization of the court down to and including the year 1862, the records are complete and include an appearance docket, a trial calendar upon which is docketed every case that was tried, and upon

which also *is* shown the minutes made by the judge at the time the cases were heard. There are also journals of the court in which are spread at length the orders entered in the various cases tried. Subsequent to the year 1863 there are also appearance dockets, trial dockets, and journals, kept in practically the same form as at present, showing the action of the court, as in those prior to 1863. The appearance docket covering the year 1863 is one which was begun prior to that year, and which covers the year 1862. It also covers the year 1864 and several years subsequent thereto. This appearance docket, however, shows but the entry of five cases during the year 1863. The cases at that time were docketed three upon a page, and there are numerous blank pages after the docketing of the last five cases for 1863 before the docketing of the first case in 1864. The first trial docket made up after the year 1862 has upon it each of five cases appearing upon the appearance docket for 1863, and also shows forty-seven other cases docketed during the year 1863, but not appearing upon the appearance docket. Some of these show, however, that they are petitions for new trial, cases appealed from justice court, motions for confirmation of sheriff's sales, transfers of cases from other counties, and other proceedings, which an inspection of the appearance docket shows it evidently was not the custom to place upon the appearance docket. Deducting matters of this nature from the full number

> of cases docketed upon the trial docket which had been filed in 1863 leaves such a number of cases as should have appeared upon the appearance docket as could be docketed upon the pages left blank in the appearance docket between the cases docketed in 1863 and those docketed in 1864.

It is thought that this finding can not be construed as a finding that "the journal of 1863 has not been shown to be in existence."

The agreed facts, which were the result of an investigation of the records by a special attorney of the Department of Justice, showed that the records for the district court of Nebraska down to and including the year 1862 were complete. These records mentioned were the appearance docket, trial docket, and the journal of the court. Subsequent to 1863 there are also appearance dockets, trial dockets, and journals. The only entries appearing in the year 1863 were the entries of five cases on the appearance docket. In this docket, following the entry of the five cases in 1863, there were numerous blank pages, which were followed by the docketing of cases in 1864. The first trial docket made up after the year 1862 has upon it each of the five cases appearing upon the appearance docket for 1863 and also 47 other cases docketed during the year 1863, but not appearing upon the appearance docket. Some of these cases, however, are petitions for new trial, appeals from justice courts, motions for confirmation of sheriff's sales, etc.

The significance of this showing is, not that there is a failure to account for the journal for 1863, *but that there was no term of court held in 1863*, which, if held, would have appeard upon the journal. Counsel for the appellant seem to proceed upon the idea that separate dockets, trial and appearance, and separate journals, in the sense of separate books, were kept for each year. The entries on the trial and appearance dockets run through from 1862 to 1864, including entries on the appearance docket for 1863. The journal for 1862 and the journal for 1864 are in existence (Finding V); and by "journal" is meant the proceedings had daily before the court. When counsel for the appellant say that "the journal for 1863 is not accounted for," they mean to say that while the journals (i. e., the minutes of the things had and done in court) for 1862 and 1864 appear intact, yet the journal for 1863 (i. e., the minutes of the things had and done in court for that year) is not accounted for.

As stated before, the reasonable presumption arising from this state of the record showing journals in due form for 1862 and 1864, and showing the entry on the appearance docket of five cases in 1863, but failing to show any entrances on the trial docket for 1863, is that there was nothing had and done by the court to appear on the journal for 1863. In other words, we have for the year 1863 the evidence of ministerial acts on the part of the clerk by the entry of cases on the appearance

docket, while we have no evidence of judicial acts by the court, nothing appearing on the minutes, which are the records of things had and done by the court during term time; and nothing appearing on the trial docket, which would be the evidence of cases tried at a term of court. This condition of the record indicates, as has been hereinbefore stated, *that there was no term of the district court held* in Richardson County, Nebr., for the year 1863.

Another significant suggestion is offered by the record, viz, unquestionably the claimant, by his notice to the Attorney-General, referred to in the first part of this brief, intended to proceed under sections 899 and 900 of the Revised Statutes for the restoration of a record lost or destroyed. Undoubtedly, upon the presentation of this question to the court, it was discovered that the records supposed to be lost or destroyed (the journal, i. e., book wherein the minutes of the court were entered) was not lost or destroyed, but failed to show the entry of the decree of naturalization. That such journal was not lost or destroyed, but was in existence at the time of the hearing, and failed to show the entry of the decree of naturalization, is evidenced by the rendition of the judgment *nunc pro tunc*, instead of the judgment originally intended to be secured under sections 899 and 900 of the Revised Statutes.

The defendants reiterate their former insistence that Finding V, viewed in these lights, clearly

establishes the fact that a journal, wherein orders of court may have been entered, was in existence in 1863 but failed to evidence the holding of a term of court for that year. It is to the establishment of a record by way of amendment *nunc pro tunc* when there is no evidence of the existence of any such record or the existence of any memoranda or memorial paper showing that any such proceedings were ever instituted or had in the Territorial court, that the defendants objected in the court below and here renew such objection.

The entry of such a decree *nunc pro tunc* where there is no record to amend nor memorial paper or memoranda of what transpired at the time, furnishes the reason for the oft-repeated denials of the courts to permit the rendition of such a judgment *nunc pro tunc*. It is said in the case of *Lynch* v. *Reynolds* (6 Bush. (Ky.), 547):

> The proposition is to supply the whole by the memory of the judge alone of what took place. The accuracy of the memory of the judge as to what he states can not be questioned, but can omissions and failures to enter orders and judgments be thus supplied at a subsequent term? If they can, the records of courts must lose their verity, and the rights of the citizen depend on the varying and fading memories of men. The law forbids such a state of things. This question we regard as virtually settled in *Vandever* v. *Griffith* (2 Metc. (Ky.), 425).

III. POWER OF COURT TO RENDER *NUNC PRO TUNC* ORDERS.

As stated hereinbefore, there is no question but that courts of record have the inherent power to enter judgments *nunc pro tunc* to correct mistakes and supply defects arising from the omissions of the clerk or recording officer, and to have the record conform to the actual facts and truth of each case.

The authorities cited by the appellant on pages 20 to 27 of his brief, upon examination, will be found to apply to *cases pending* in the court wherein the order was made. In other words, in each of these cases referred to there was some record in the case in the court of the pendancy of an action of some kind, whether it rested upon an indictment and other entries of record in a criminal proceeding, as in re *Wight* (134 U. S., 136) or *Gonzales* v. *Cunningham* (164 U. S., 612, 613) or in any of the other cases cited by the appellant.

These cases stand upon an entirely different footing to those hereinafter cited by the appellees, the distinction being that the court, in all the authorities relied upon by the appellant, entered judgments *nunc pro tunc* amending the records of the court, which records showed the pendancy of a suit, or action of some kind. The authorities hereinafter referred to in support of the appellees' contention, show that there must be a basis for an order *nunc pro tunc*, in that there must be something in the record to amend by. Some entry upon the docket

of the court, memoranda, or memorial paper must be shown as a basis for the order *nunc pro tunc*.

In an early case, that of *Hamilton Bank* v. *Dudley*, 2 Pet. (U. S.), 522, Chief Justice Marshall said:

> That a court of record, whose proceedings can be proved by the record alone, should, at a subsequent term, determine that an order was made at a previous term, of which no trace could be found on its records * * * is a proceeding of so much delicacy and danger, which is liable to so much abuse, that some of us question the existence of the power.

The supreme court of Indiana draws a distinction between orders *nunc pro tunc* to supply an omission in a record and an order *nunc pro tunc* to correct a clerical error of commission. The court says:

> In the case of *nunc pro tunc* entries of something that has been done but not entered in the original cause, it would appear that they can be allowed only where there is some memorial paper or other minute of the transaction in the case from which it can be clearly ascertained and known what actually took place in the original proceeding. (Citing *Makepeace* v. *Lukens*, 27 Ind., 435, and other authorities.)
>
> But in the case of an amendment to correct a clerical error of commission any evidence of the fact of the error is, it would

seem, competent. (Citing *Mitchell* v. *Lincoln*, 78 Ind., 531, and other cases.)

Mitchell v. *Lincoln*, 78 Ind., 531.

In *Balinsky* v. *State*, 3 Minn., 427, the court said:

> While we admit the power to amend a record after the term has passed in which the record was made up, we would deprecate the exercise of the power in any case where there was the least room for doubt about the facts upon which the amendment was sought to be made.

In the case of *Coughran* v. *Gutcheus* (18 Ill., 390) it is said:

> Where there is nothing to amend by, and the court is compelled to learn from the memory of witnesses what its judgment in fact was, it may well be doubted whether, upon motion and *ex parte* proof, however strong and contradicting the record, an amendment can be made conforming the record of the judgment to such proof. (A number of cases from Alabama, Georgia, Illinois, Iowa, Kentucky, Missouri, New Mexico, North Carolina, and Texas are cited in support of this contention. See Enc. Pleading and Practice, vol. 17, p. 930; also, *Tilghman* v. *Werk*, 39 Fed. Rep., 680.)

In the case of *Lynch* v. *Reynolds* (6 Bush (Ky.), 547) it is said:

> The proposition is to supply the whole by the memory of the judge, alone, of what took place. The accuracy of the memory of the judge as to what he states can not be

> questioned, but can omissions and failures to enter orders and judgments be thus supplied at a subsequent term? If they can, the records of courts must lose their verity, and the rights of the citizen depend on the varying and fading memories of men. The law forbids such a state of things. This question we regard as virtually settled in *Vandever* v. *Griffith* (2 Metc. (Ky.), 425). (Citing other cases in support of the contention.)
>
> Encyl. of Pleading and Practice, vol. 17, p. 930.

This doctrine has been followed in a number of Mississippi cases. In *Shackleford* v. *Levy* (63 Miss., 128) it was stated by Judge Cooper:

> At an early day in the history of this State it was decided by this court that no judgment could be amended after the term in which it had been rendered, or judgment entered *nunc pro tunc*, unless the facts authorizing such action were exhibited by the record, and that notes made by the judge on the docket or memoranda found among the papers could not be considered.
>
> See also 1 Howard (Miss.), 39; 3 S. & M. (Miss.), 234; 41 Miss., 565.

The court will also find on page 930 of volume 17, Encyclopaedia of Pleading and Practice, very many authorities, both State and Federal, supporting this contention, viz, that there must be a basis for an order *nunc pro tunc*. In the case of *Albers and Born* v. *Whitney et al.* (Story U. S.

Circuit, 310) Judge Story discusses the power of the courts to enter *nunc pro tunc* orders, stating that—

> The doctrine of the English courts in all cases of ordinary suits (excluding fines and recoveries) is that judgments and records are amendable only—first, where the case is within the reach of some statute; and second, where there is something to amend by.
>
> At common law, no judgment was amendable after the term at which it was entered.

In the case of *Cromwell* v. *Bank of Pittsburg* (2 Wall., 586), after discussing with great elaboration the right of amendment and the necessity for the same by reason of misprision, Judge Grier says:

> * * * A court may possibly not have the power to alter or vacate its own judgments truly recorded after the term to which they have been entered. But that any misprision, omission, or mistake of the clerk may be amended at any time, *where the record shows anything to amend by*, has never been doubted since the statute of 1 Edward III, c. 6.

In the case of *Russel* v. *McDougal* (3 S. & M. (Miss.), 234) Chief Justice Sharkey approved this doctrine. Upon this subject, on page 248, he says:

> Courts may amend the mistakes or errors of their clerks, provided there is anything in the record or proceedings to amend by; but at a subsequent term they can not amend their own judgment unless it be in such a

> way as provided for by statute. But in no case can an amendment be made unless there be something to amend by.

In the case of *Moody* v. *Grant* (41 Miss., 565) it was held by Elett, judge, that—

> A record can not be amended after the term, unless there is something in the record to amend by; parol proof of what was done, or a written memorandum of the attorney filed with the papers, is not sufficient to authorize an amendment of the record.

In the case of *Smith* v. *Hood* (25 Pa., 218), this doctrine is also followed, the court stating that an amendment might be made for a clerical mistake in entering a judgment *where there is anything to amend by*.

The supreme court of Illinois in the case of *Morton Culver* v. *Cougle* (165 Ill., 417) follows the case of *Coughran* v. *Gutcheus* (18 Ill., 390), heretofore cited, holding, in effect, that before an amendment can be made—

> There must be some minute in the record by which to amend. After term has expired which judgment was entered a court can not amend a former order unless there be some minute or memorial paper in the record or on the docket to show what the order to be amended in fact was.
>
> *Culver* v. *Cougle* (62 Ill. App., 583), affirmed.

The supreme court of Indiana sanctions this view in the case of *Boyd* v. *Blaisdell* (15 Ind., 73).

This court follows the doctrine laid down in *Albers* v. *Whitney* (1 Story's reports, 310), heretofore cited, and holds expressly upon this point as follows:

> Now, there seems to be an impression that our code has enlarged the power to make amendments in records to an almost indefinite extent, and that judgments may be altered in the discretion of the court. This idea was practiced upon below in the case of *Kyle* v. *Hayward* (14 Ind., 377). We are not prepared to admit the proposition. We doubt whether a judge can alter a judgment after the close of the term where there is nothing to amend by; and he assumes to do it on the ground that the judgment, as entered, does not express the intention of his mind at the time it was entered. This would enable courts to carry their records, and the ultimate rights of parties, about the country in their heads in rather too concealed a manner. What provisions are there in the code justifying such amendments? Misprisions of clerks may be corrected, especially where are data to amend by. Judgments of the courts can not be, as a general rule. There may be exceptions. See the cases in Curtis's Dig., etc.

The supreme court of Missouri in the case of *State ex rel.* v. *Prim* (61 Mo., 166) follows the foregoing authorities, holding:

> A court may at subsequent terms set right mere forms in its judgment or correct misprisions of its clerks or mere clerical errors, so as to conform the record to the truth. And the corrections may be made from the judge's dockets or clerk's minutes or other records pertaining to the case, but not from extraneous testimony, such as affidavits.

The sum and substance of these authorities, which could be largely multiplied, is that before any amendment can be made, *nunc pro tunc* or otherwise, after the expiration of the term there must be something to amend by—some memorial paper or record of some kind. Some of the authorities hold that certain memoranda of the court are sufficient, while other authorities hold that such memoranda are insufficient; but all with unanimity hold that there must be some record or memorial or something by which the amendment can be made. In this case there is an attempt to tack an amendment onto a vacuum.

IV. PROCEEDINGS COLLATERALLY ATTACKED.

The question involved in this case, viz, the citizenship of the appellant, is a question jurisdictional to the Court of Claims. Unless the appellant was a citizen of the United States in the month of February, 1866, the Court of Claims had no jurisdiction under the Indian depredation act of March 3, 1891. (First Supp. R. S., 2d ed., 913.) The fourth finding of the court establishes the fact that the appellant was foreign born and declared his

intention to become a citizen of the United States on the 12th of March, 1858. The Court of Claims was therefore met at the threshold of this case by the fact that this appellant was foreign born; and unless the evidence was satisfactory to establish the court's own jurisdiction—the citizenship of appellant—the petition would necessarily be dismissed.

The court, inquiring into the facts that constituted its own jurisdiction, found that the claim of citizenship of Charles Gagnon was based upon an order *nunc pro tunc* that was rendered thirty-three years after the alleged original decree of naturalization, which of itself was sufficient to put the court upon inquiry as to the right of the court rendering such judgment *nunc pro tunc*, to enter the same.

Upon inquiry the court found, by Findings V and VI, under appellees' construction of Finding V, that the records of the district court of Richardson County, Nebr., wherein the naturalization is said to have been had in 1863, is intact and shows no entry of any decree or order of the court naturalizing the appellant at the time he stated that he was naturalized. The Court of Claims further found, by Finding VI, that there was no record or memoranda or other paper of any kind in the records of said court or among the files thereof showing or relating to the application by Charles Gagnon for naturalization before said dis-

trict court, nor was there any such paper in the records of said court on the 29th and 30th days of March, 1897, when the proceedings for the restoration of the record of naturalization was taken, nor does it appear that a certificate of naturalization was ever issued or delivered to the appellant.

As a basis for the jurisdiction and power of the court to render this order *nunc pro tunc*, the court before which the original proceeding is said to have been had, must have actually had jurisdiction of the party naturalized and of the question before it at the time of the alleged naturalization. Without this jurisdiction in the court originally, the district court for Richardson County, Nebr., in 1897 had no jurisdiction to render the order *nunc pro tunc*. If the records of that court were intact in 1897 and showed no decree of naturalization, and if there was no memoranda or other paper of any kind in the files of the court showing such decree of naturalization in 1863, then the district court of Richardson County, Nebr., in 1897 had no power to render the judgment *nunc pro tunc*.

It seems to be a well-settled proposition that the court wherein the judgment of a sister State is introduced may always inquire into the question of the jurisdiction of the court in which the judgment was rendered over the subject-matter or the parties affected by it and *into the facts necessary to give*

such jurisdiction. Mr. Justice Lamar, in the case of *Simmons* v. *Saul* (138 U. S., 439), said:

> It is the well-settled doctrine of this court that the constitutional provision that full faith and credit shall be given in each State to the judicial proceedings of other States, does not preclude inquiry into the jurisdiction of the court in which a judgment is rendered over the subject-matter or the parties affected by it, nor into the facts necessary to give such jurisdiction. (Citing *Thompson* v. *Whitman*, 18 Wall., 457; *Cole* v. *Cunningham*, 133 U. S., 107.)

In inquiring into the facts that gave the court power and jurisdiction to render this order *nunc pro tunc*, the Court of Claims found, according to appellee's construction of Finding V, that the records of the district court of Richardson County, Nebr., for the year 1863 were intact; that there was no entry or memoranda upon said records showing any naturalization proceeding in 1863 whereby the appellant Gagnon was naturalized; that there was no memoranda or writing of any kind in the files of the court showing that any such proceedings were ever instituted or had; that the district judge and the clerk of the court who had presided and officiated in the year 1863 were both dead; and that the sole evidence upon which the order *nunc pro tunc* was based was oral. Upon this state of the facts the court held that there was no power in the district court of Richardson County,

Nebr., in 1897 to enter a decree of naturalization *nunc pro tunc*.

In his opinion, Peelle, J., stated:

> While lapse of time in a proper case may not take away the right or jurisdiction of a court to make *nunc pro tunc* entries to conform its record to the truth, it is an element to be considered in this case, where there is a total absence of any record showing that the claimant ever applied to become a citizen, and hence the *nunc pro tunc* entry was rather an original order made now for then than an entry made now for then of an order previously made. (R., p. 13.)

V. CONCLUSION.

The appellees stand upon the proposition that the question of the citizenship of the appellant being a question going to the jurisdiction of the Court of Claims, that court had a right to inquire into the facts conferring such jurisdiction. It appearing that such jurisdiction was conferred by an order *nunc pro tunc* of a court which purported to supply a record of something that was done thirty-three years before the date of the decree *nunc pro tunc*, the Court of Claims had a right to inquire into the facts necessary to give the court power and jurisdiction to render the order *nunc pro tunc*. It being made to appear further to the court that the records of the court wherein the original naturalization was alleged to be had were

intact, and it appearing also that at the time the order *nunc pro tunc* was rendered there was no record or memoranda or other paper of any kind in the records of said court or among the files thereof showing or relating to an application by Charles Gagnon for naturalization, etc. (Finding VI), it is most respectfully submitted that the Court of Claims did not exceed its authority in declining to accept the decree *nunc pro tunc* as sufficient evidence to establish the jurisdictional question of the appellant's citizenship.

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